IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI-GOA

CRIMINAL REVISION APPLICATION NO.26 OF 2006

1. Mr. Pramod Bunyan
2. Mrs. Rosaline Bunyan
3. Ms. Preeti Bunyan
4. Mr. Kirti Bunyan
   All residents of 123, 'Pramrose',
   Near Naval Public School, Chicalim, Goa. .... Petitioners

Versus

Mr. B.N. Chonkar,
Inspector, C.B.I./A.C.B. Goa,
Having his Office at Altinho,
Panaji, Goa. .... Respondent

Shri Ryan Menezes, Advocate for the Petitioners.

Shri Joseph Vaz, Special Public Prosecutor for the Respondent.

CORAM: **N. A. BRITTO, J.**

DATE: **27th July, 2006**

ORAL ORDER

Heard Shri Menezes, the learned Counsel on behalf of the petitioners and Shri J. Vaz, the learned Special Public Prosecutor on behalf of the respondent.

2. The petitioner no.1 was working as a Superintendent of Customs. He is facing trial in Special Case No. 4 of 1005 under Section 13 (2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 and his wife, the petitioner no.2, for abetment of the said offences. The petitioners no. 3 & 4 are their children.

3. During the course of search certain gold ornaments were seized. The gold ornaments mentioned in para 3(a) of the order of the learned Special Judge dated 3/06/2006 were seized from the house of the petitioners no. 1 & 2. The gold articles mentioned in para (b) & (c) of the said order were seized from the bank locker in the names of petitioners no.1 & 2. The petitioners having made an application under Section 451 of the Code of Criminal Procedure, 1973 before the learned Special Judge for the return of the said articles the learned Special Judge was pleased to allow the application partly. In allowing the application the learned Special Judge ordered that the fixed deposit receipts described under item numbers (i) to (iv) of para 3(c) of the aforesaid order be returned to the respective petitioners but as far as the gold ornaments under (a), (b) & (c) (iv) to (viii), the learned Special Judge was pleased to reject the application since they were liable to be confiscated incase they are proved that they formed

part of disproportionate income of petitioner no.1. The learned Special Judge, therefore held that the said articles could not be returned to the petitioners even upon execution of indemnity bonds.

4. Therefore, the petitioners have filed the present petition for a direction that the said seized articles be returned to the petitioners.

5. On behalf of the petitioners it is submitted by learned Advocate Shri Menezes that most of the gold jewellery described in Annexure A, seized on 21/03/2003 from the house of the petitioners belongs to the petitioner no.3 who is the daughter of petitioners no.1 & 2 except item numbers 1,2 & 14. It is also submitted that petitioner no.3 was working in Bangalore and had acquired the said articles from her own income. It is further submitted that the remaining ornaments be furnished to the respective petitioners or alternatively to the petitioner no.1. It is submitted that incase the said articles are released or handed over to the petitioners or petitioner no.1 during the pendency of the trial no prejudice would be caused to the respondent but incase they are not returned, prejudice is being caused to the petitioners as they are being deprived from using the same. It is submitted that the said articles be returned to the

petitioners or alternatively to petitioner no.1 on such conditions as deemed fit. Reliance has been placed on behalf of the petitioners on the case of ***Sunderbhai Ambalal Desai and C.M. Mudaliar*** **Versus** ***State of Gujarat*** (AIR 2003 SC 638).

6. On the other hand, it is submitted on behalf of the respondent, by Shri Vaz, the learned Special Public Prosecutor that the ratio of the aforesaid decision would be inapplicable to a case where the articles are liable to be forfeited in favour of the State. It is also pointed out that the learned Special Judge on or about 26/03/2006 had ordered that the said articles be retained by the respondent, permission to that effect having been applied for. Referring to the provisions of Section 451 of the Code, it is submitted that the petitioners would not be entitled to the said articles and it is the respondent-State who is entitled to the same.

7. In fact this is second round, that the petitioners are before this Court, seeking the interim custody of the said articles, seized from the bank locker and the house of the petitioners no.1 & 2. The first application of the petitioners was disposed of by this Court by order dated 6/04/2004 and the learned Special Judge was directed to consider the applications for return of

the articles made by the petitioners, in the light of the law laid down by the Apex Court in the case of ***Mirza Iqbal Hussain*** **Versus** ***State of U.P.*** (AIR 1983 SC 60) and ***Sunderbhai Ambalal Desai and C.M. Madaliar*** **Versus** ***State of Gujarat*** (AIR 2003 SC 638). On behalf of both the parties, learned Counsel appearing on their behalf, have not been able to bring to my notice any provision of law or any decided case to show that in any case where ultimately the articles would be liable for confiscation, their interim custody cannot be given to the persons from whose possession they have been seized. In my opinion there could be none. The State would be entitled to the possession of the seized articles only in the event an order forfeiting the same is made at a subsequent date and not at this stage. The Apex Court in the case of ***Sunderbhai Ambalal Desai*** (supra), referring to the provisions of Section 451 of Criminal Procedure Code observed that in case the powers under Section 451 of Criminal Procedure Code are exercised expeditiously and judiciously it would serve various purposes namely :

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. Court or the police would not be required to keep the articles in safe custody;

3. If the proper panchnama before handing over possession of article if prepared, that can be

used in evidence instead of its production before the Court during the trial. If necessary evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further choice of tampering with the articles.

8. In my view there cannot be any broad proposition of law that the articles which would be ultimately liable for confiscation, cannot be returned to the persons from whose possession they have been seized and when there is no dispute as regards the said possession. As far as the case goes, it is the petitioner no.1 who is being prosecuted for possession of disproportionate assets and his wife, petitioner no.2, having abeted the said offences. No material was produced on behalf of petitioner no. 3, even to show prima facie, that some articles reference to which has been made herein above, were acquired by her from her own independent source of income and even at this stage with the aid of presumption available under the Prevention of Corruption Act, 1988, it could be presumed that all the articles seized from the house and locker belong to the petitioner no.1. In the absence of any provision of law being brought to my notice that articles liable for confiscation cannot be returned to the person from whose

possession they were seized, by the learned Counsel on behalf of both the parties, I find that no useful purpose would be served by continuing with the retention of the said articles by the investigation officer pursuant to order dated 26/03/03 or in Court, as stated by Supreme Court in ***Sunderbhai Ambalal Desai*** (supra). In my view this would be a fit case to hand over the seized articles to the petitioner no.1, upon execution of an indemnity bond to produce the same before the Court. Consequently, I allow the application and order that articles mentioned in para 3(a), 3(b) & 3(c) (iv) to (viii) be returned to the petitioner no.1 with a condition that the petitioner no.1 executes an indemnity bond in the sum of Rs. 1.50,000/- to the satisfaction of the learned Special Judge to produce the said articles as and when ordered to do so and with a further condition that the petitioner no.1 shall produce the said articles before the Court for every day of hearing and at the time of taking the said articles either from the investigation officer or the Court shall cause the photographs of the same to be taken at the cost of petitioner no.1 and hand over the said photographs to the investigation officer. Petition disposed of on above terms with no order as to costs.

N. A. BRITTO, J.

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